

SEMINOLE COUNTY GOVERNMENT AGENDA MEMORANDUM

SUBJECT: Appeal of the Board of Adjustment's decision to DENY the following requested variances: (1) Variance from 10 feet to 7.5 feet for the required accessory building setback on west side; (2) Variance from 25 feet to 18 feet for the required side street setback in an R-IAA district; and (3) Variance of maximum fence height from 3 feet to 6 feet within 25 feet of a street. (Raquel Galdo Morales, appellant)

DEPARTMENT: Planning and Development **DIVISION:** Planning

AUTHORIZED BY: Donald S. Fisher **CONTACT:** Jeff Hopper **EXT:** 7431

Agenda Date <u>10/22/02</u> Regular <input type="checkbox"/> Consent <input type="checkbox"/> Work Session <input type="checkbox"/> Briefing <input type="checkbox"/>
Public Hearing – 1:30 <input checked="" type="checkbox"/> Public Hearing – 7:00 <input type="checkbox"/>

MOTION/RECOMMENDATION:

1. UPHOLD the Board of Adjustment's decision of August 26, 2002 to deny one or all requested variances. (Raquel Galdo Morales, appellant)
2. OVERTURN the Board of Adjustment's decision of August 26, 2002, granting one or all requested variances. (Raquel Galdo Morales, appellant)
3. CONTINUE the request to a time certain.

(Commission District #1, Maloy) (Jeff Hopper, Senior Planner)

BACKGROUND:

The appellant is proposing to construct a tool shed in her rear yard, at a distance of 7.5 feet from the rear lot line, on the edge of a platted drainage and utility easement. Due to the presence of a 1,000 square-foot screen enclosure on the rear of the house, the proposed location of the shed is offset some distance to the south to provide greater use of yard space around the existing structure. Accommodating this proposal entails variances of the side street setback and accessory building setback requirements, and a variance of the fence height limit from 3 feet to 6 feet within the side street setback. The proposed setback for the appellant's 6-foot privacy fence is 15 feet.

At the hearing, BOA members expressed a concern that the requested variances would result in an inappropriate intrusion into the required street side yard along Walnut Grove Place. This 25-foot yard is currently unobstructed by fences or other structures, either on the appellant's property or that of her neighbor to the west. The proposed

Reviewed by:	
Co Atty:	<u>KCC</u>
DFS:	<u> / </u>
Other:	<u>MIW</u>
DCM:	<u> / </u>
CM:	<u> / </u>
File No.	<u>ph130pdp03</u>

fence and accessory building would reduce the open area within the side yard from 25 feet to 15 feet.

Although recommending denial of this application, Planning staff suggested an alternative variance in the event BOA members felt that some hardship relief was appropriate. This option would entail a different request meeting some of the appellant's needs without intruding on the established side yard adjacent to Walnut Grove Place. A greater variance to the accessory building setback requirement would allow the shed to be placed farther to the rear while maintaining the street side yard in its current, unobstructed form. This action would require a new application to the Board of Adjustment, and also would be subject to vacation of the drainage and utility easement at the rear of the property. However, it would maintain the setback pattern of existing structures along the street, and maximize visibility for motorists in a low intensity residential area.

STANDARDS FOR GRANTING VARIANCES:

In order to grant a variance, the Land Development Code requires a finding that literal enforcement of applicable regulations will result in an unnecessary and undue hardship upon the applicant. Any variance approved must comply with all of the following criteria:

Section 30.43 (b)(3)(a)	That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning classification.
Section 30.43(b)(3)(b)	That the special conditions and circumstances do not result from the actions of the applicant.
Section 30.43(b)(3)(c)	That granting the variance requested will not confer on the applicant any special privilege that is denied by Chapter 30 to other lands, buildings, or structures in the same zoning classification.
Section 30.43(b)(3)(d)	That literal interpretation of the provisions of Chapter 30 would deprive the applicant of rights commonly enjoyed by other properties in the same zoning classification and would work unnecessary and undue hardship on the applicant.
Section 30.43(b)(3)(e)	That the variance granted is the minimum variance that will make possible the reasonable use of the land, building, or structure.
Section 30.43(b)(3)(f)	That the grant of the variance will be in harmony with the general intent and purpose of Chapter 30, will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

BOARD OF ADJUSTMENT DECISION:

At its August 26, 2002 meeting, the Board of Adjustment denied the request by a vote of 3 to 2.

STAFF FINDINGS AND RECOMMENDATION:

Staff recommends that the BOA's decision be UPHELD based on the following findings:

1. The request does not comply with Section 30.43 (b)(3)(a), since the lot is more than ¼ acre in area, and has no peculiarities in its size or shape.

2. The request does not comply with Section 30.43 (b)(3)(d), in that neighboring properties are not subject to lesser side street setback requirements than the subject property, and do in fact meet those requirements.
3. The request does not comply with Section 30.43 (b)(3)(e), in that the site already contains a 1,600 square foot home and the appellant has a full and reasonable use of the property without the requested variances.
4. Approval of the variances would permit an obstruction in an otherwise structure-free side yard area along the north side of Walnut Grove Place, running the length of two blocks extending east from Erskine Drive.

If the BCC wishes to approve a variance, Staff makes the following recommendations:

1. The fence height variance, if granted, should be conditioned upon meeting a 15-foot setback from the Walnut Grove Place right-of-way, as shown in the attached site plan.
2. In granting the variance(s), the BCC should state whether its decision is specific to the structures shown on the submitted site plan, or if larger/additional structures not presented at this time could be permitted in the future.

Attachments:

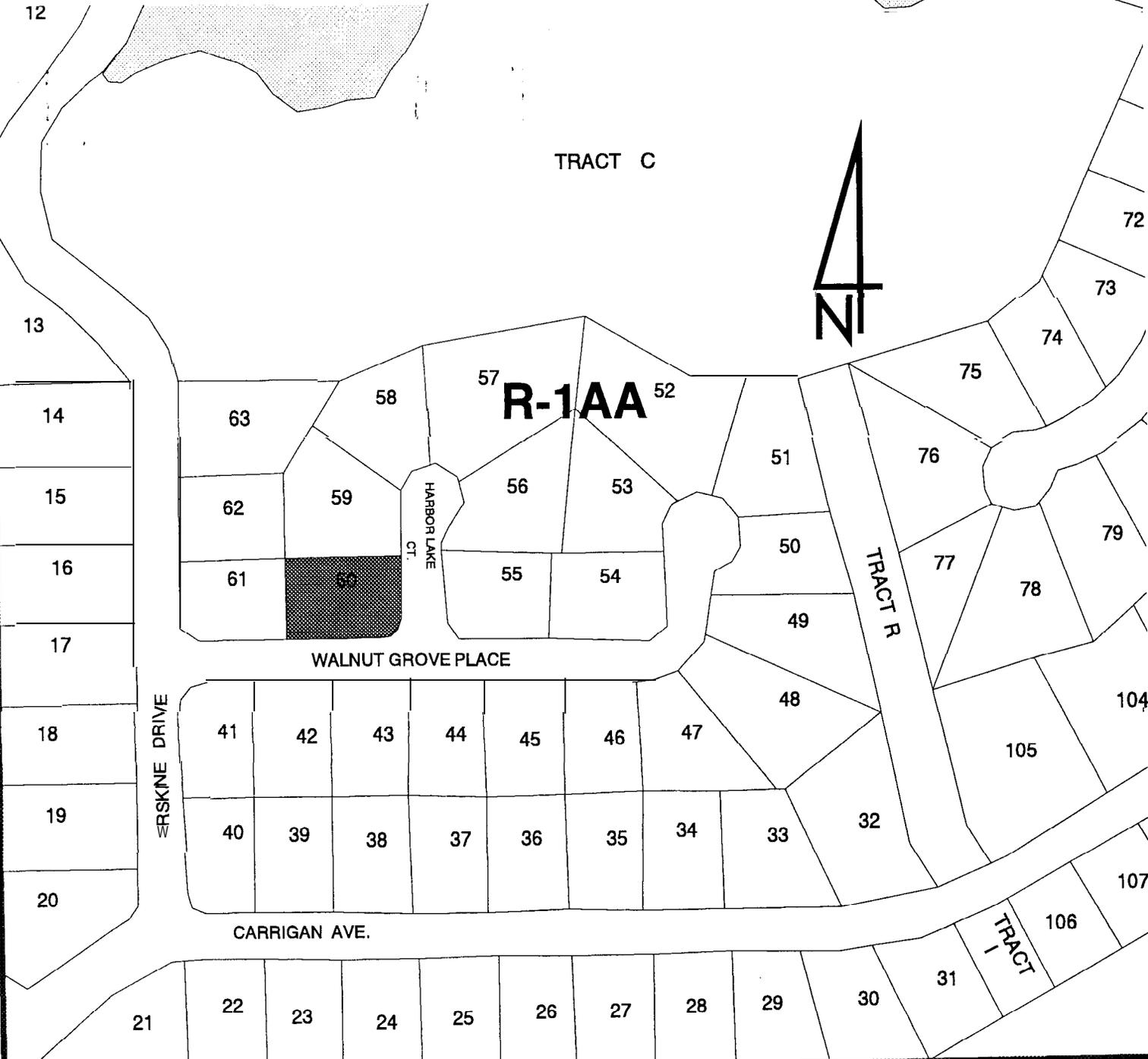
1. Location map
2. Site plan
3. Decision on appeal
4. Minutes from the August 26, 2002 Board of Adjustment meeting
5. Appeal letter

30	1.0	30		
29.0	1			
29	2	29		
1.0	2.0			
28	3	28		
27	4.0	4	27	
17.0	4.A			
26	5.0	5	25.b	26
5.0		6	25	
25				
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1.0		8	23	22.0
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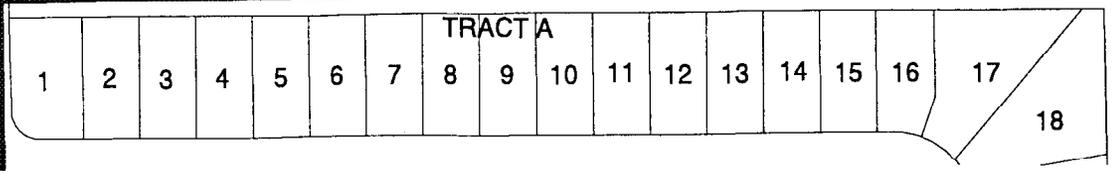
DIVISION ST

MOORE DR

WRSKNE DRIVE



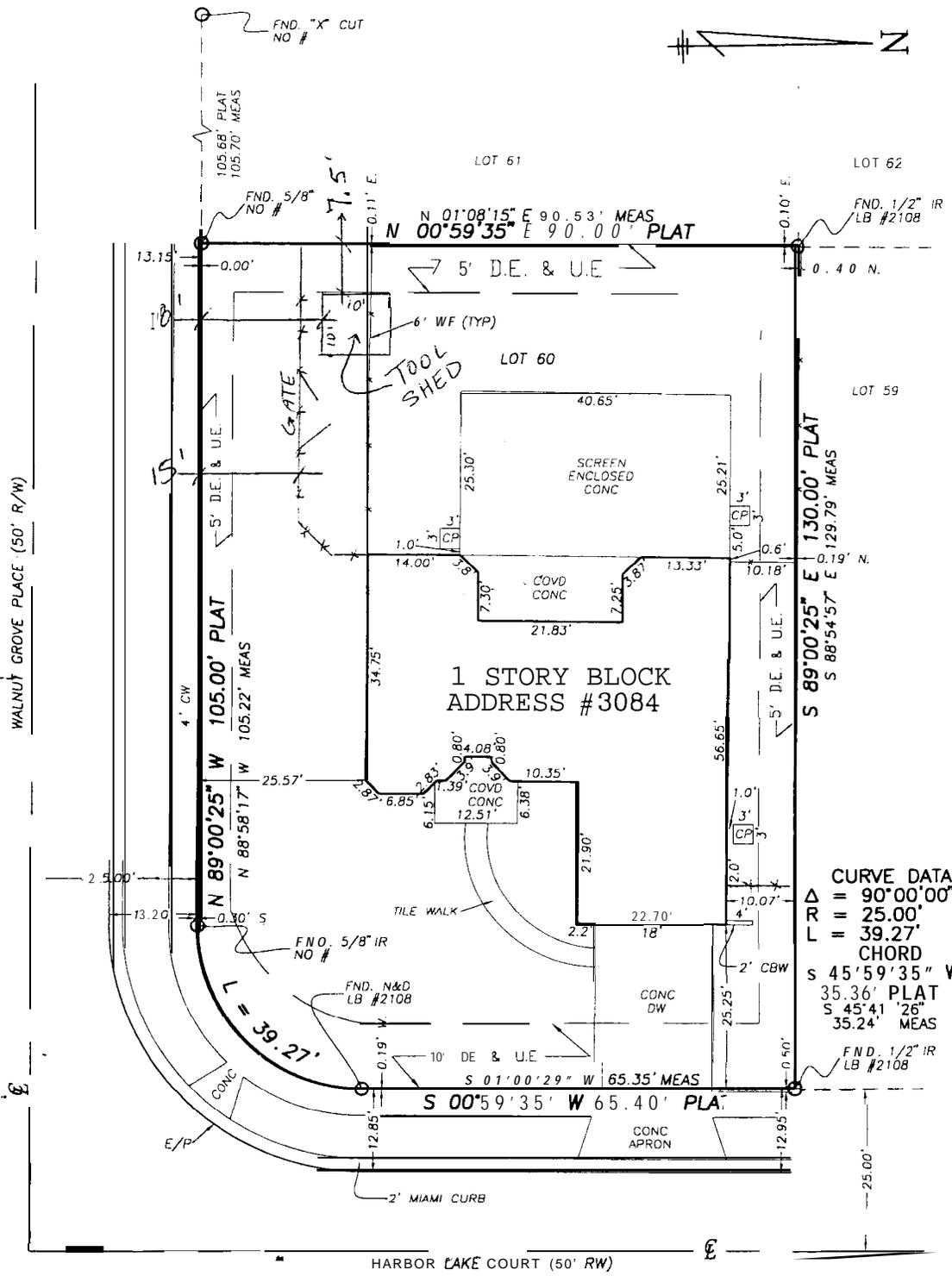
23	1	20
		19.0
		16



PLAT OF SURVEY

DESCRIPTION

LOT 60, STILLWATER - PHASE 2, AS RECORDED IN PLAT BOOK 36, PAGES 93, 94, 95, 96, 97, 98, AND 99, PUBLIC RECORDS OF SEMINOLE COUNTY, FLORIDA



CURVE DATA
 $\Delta = 90^{\circ}00'00''$
 $R = 25.00'$
 $L = 39.27'$
CHORD
 $S 45^{\circ}59'35'' W$
 $35.36'$ PLAT
 $S 45^{\circ}41'26''$
 $35.24'$ MEAS

CE# S639-93LO160
 DATE: JUNE 20, 2002
 SCALE 1" = 20'
 DRAWN BY C.J.

BOUNDARY SURVEY CERTIFIED TO: RAQUEL GALDO - MORALES

REVISIONS

ACCURIGHT SURVEYS
 of Orlando Inc., LB 4475
 2012 E. Robinson St.
 Orlando, Florida 32803
 PHONE (407) 894-6314 FAX (407) 897-3777
Frank A. Raymond III
FRANK A. RAYMOND III PLS 5325

- NOTES:**
1. BEARING STRUCTURE BASED ON: THE NORTH R/W LINE OF WALNUT GROVE PLACE.
 2. THIS BUILDING/LOT IS NOT IN A FLOOD PRONE AREA, ZONE X, BASED ON FLOOD INSURANCE RATE MAP, NO. 120289 0165 E, SEMINOLE COUNTY, FLORIDA.
 3. THIS SURVEY REFLECTS ONLY MATTERS OF RECORD AS PROVIDED BY CLIENT.
 4. UNDERGROUND IMPROVEMENTS HAVE NOT BEEN LOCATED.
 5. BUILDING TIES SHOWN ON THIS SURVEY SHOULD NOT BE USED TO RECONSTRUCT PROPERTY LINES.

LEGEND

CL - CENTERLINE	LSA - LANDSCAPE AREA
CBW - CONCRETE BLOCK WALL	MEAS - MEASURED
CC - COVERED CONCRETE	MS - METAL SHED
CLF - CHAIN LINK FENCE	N&D - NAIL & DISK
CM - CONCRETE MONUMENT	CW - OVERHEAD WIRE
CONC - CONCRETE	ORB - OFFICIAL RECORDS BOOK
COVD - COVERED	P&M - PLAT & MEASURED
CP - CONCRETE PAD	PC - POINT OF CURVATURE
CW - CONCRETE WALKWAY	PC - PAGE
DA - DRIVEWAY	POB - POINT OF BEGINNING
DE - DRAINAGE EASEMENT	POC - POINT OF COMMENCEMENT
DESC - DESCRIPTION	R - RADIUS
DW - DRIVEWAY	R/W - RIGHT OF WAY
E/P - EDGE OF PAVEMENT	TYP - TYPICAL
ESMT - EASEMENT	UE - UTILITY EASEMENT
FFE - FINISHED FLOOR ELEVATION	UP - UTILITY POLE
FND - FOUND	WF - WOOD FENCE
IP - IRON PIPE	# - NUMBER
IR - IRON ROD	

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF THIS FLORIDA LICENSED SURVEYOR AND MAPPER.

SEMINOLE COUNTY BOARD OF COUNTY COMMISSIONERS
DECISION ON APPEAL

This decision is made by the Board of County Commissioners of Seminole County, Florida, this 22nd day of October, 2002, in accordance with Section 30.43, Land Development Code of Seminole County (LDC), as amended, affirming a decision by the Board of Adjustment to deny a request for the following variances: (1) Variance of 2.5 ft. from the required 10-foot accessory building setback on west side; (2) Variance of 7 ft. from the required 25-foot side street setback in an R-IAA district; and (3) Variance of maximum fence height from 3 feet to 6 feet within 25 feet of a street.

A. FINDINGS OF FACT

1. On August 26, 2002, the Board of Adjustment denied a request by Raquel Galdo Morales on property described as LOT 60, STILLWATER PHASE 2 PB 36 PG 93-99 (herein referred to as the "subject property").

2. The subject property is assigned the Low Density Residential future land use designation under the terms and provisions of the Vision 2020 Plan and the R-IAA (single family dwelling district) zoning classification under the terms and provisions of the LDC.

3. On September 10, 2002, Raquel Galdo Morales filed a letter of appeal with Seminole County, seeking an appeal of this approval before the Board of County Commissioners.

4. The Board of County Commissioners has the authority and responsibility to adjudge this appeal by virtue of Section 30.43, LDC.

B. CONCLUSIONS OF LAW

The Board of County Commissioners finds that the Board of Adjustment's decision to deny the requested variances is in conformance with Section 30.43(b)(3) of the Land Development Code of Seminole County, due to the following:

The requested variances do not meet the criteria set forth in Section 30.43 (b)(3) for granting variances because:

1. No special conditions or circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning classification.
2. Any special conditions and circumstances result from the actions of the appellant.
3. Granting the variance requested will confer on the applicant special privileges that are denied by Chapter 30 to other lands, buildings, or structures in the same zoning classification.
4. Literal interpretation of the provisions of Chapter 30 would not deprive the appellant of rights commonly enjoyed by other properties in the same zoning classification and would not work unnecessary and undue hardship on the appellant.
5. The variances requested exceed the minimum necessary to make possible the reasonable use of the land, building, or structure.
6. Granting of the requested variances would not be in harmony with the general intent and purpose of Chapter 30, will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

C. **DECISION**

Based upon the foregoing and having fully considered the application submitted, and the testimony presented at the Board of County Commissioners public hearing on October 22, 2002, it is determined by majority vote of members of the Board of County Commissioners of Seminole County, Florida, that the subject decision of the Board of Adjustment is **UPHELD** and adopted in full.

DATED this 22nd day of October, 2002.

Board of County Commissioners
Seminole County, Florida

Daryl G. McLain, Chairman

- 5. Raquel Galdo Morales** – 3084 Harbor Lake Court, Oviedo – (RI-AA Single Family Dwelling District) – accessory bldg. setback variance from 10 feet to 7.5 feet, side street setback variance from 25 feet to 18 feet, and fence height variance from 3 feet to 6 feet within 25 feet of a street; Lot 60, Stillwater Ph. 2, PB 36, Pg. 03 – 99; northwest corner of Harbor Lake Court and Walnut Grove Place (BV 2002-104) BCC District 1 – Maloy (Jeff Hopper, Senior Planner)

Jeff Hopper introduced the location of the next variance request. He recommended denial based on the fact that all criteria for the granting of a variance had not been met. He stated that if the Board approves this request he requested a specification of a certain setback.

Peter Galdo, speaking on behalf of the applicant, stated that the applicant wants to extend the fence beyond the tree; a 7 ½ feet utility easement exists on part of the lot. The applicant has approval from the neighborhood HOA. There is a large tree on the NW corner of the lot.

Dan Bushrui moved to approve the granting of the variance according to the site plan submitted. Wes Pennington seconded the motion.

Lila Buchanan stated that she could not vote in favor of this request. She would rather have a rear yard variance than having one out at the road side.

The vote was 2 – 3 against the motion. The motion failed.

Lila Buchanan moved to deny the granting of the variance. Alan Rozon seconded the motion to deny.

Wes Pennington and Dan Bushrui were opposed.

The vote was 3 – 2 to deny the granting of the variance. Wes Pennington and Dan Bushrui voted in opposition. The variance request was denied.

Raquel G. Morales
3084 Harbor Lake Court
Oviedo, Florida 32765
(407) 359-3396

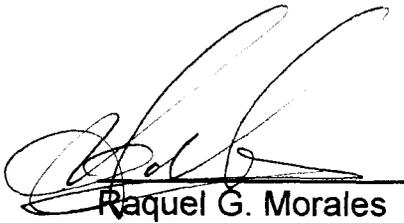
September 10, 2002

Planning Division
Attn: Jeff Hopper
1101 East First Street
Sanford, Florida 32771

To Whom It May Concern:

I am writing to request an appeal for a variance due to lack of information provided at the first public hearing. Thank you for your time and should you have any questions please feel free to call me at (407) 359-3396 or (407) 582-2594.

Sincerely,



Raquel G. Morales

T3/3802 - 104